

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

1. MAGALY GONZALES NUCAMENDI,

Plaintiff,

v.

**1. K-MAC HOLDINGS CORP., d/b/a
TACO BELL, a foreign corporation,**

Defendant.

**CASE NO. 14-CV-468-JED-TLW
(Tulsa County District Court
Case No. CJ-2014-02365)**

NOTICE OF REMOVAL

Defendant K-Mac Holdings Corp., d/b/a Taco Bell (“Defendant”), by and through its undersigned counsel, and pursuant to 28 U.S.C. §§ 1331 and 1441, hereby removes this matter from the District Court of Tulsa County, State of Oklahoma, to the United States District Court for the Northern District of Oklahoma. In support of this Notice of Removal, Defendant states the following:

1. On June 18, 2014, Plaintiff Magaly Gonzales Nucamendi (“Plaintiff”) filed a Petition in the District Court of Tulsa County, Case No. CJ-2014-02365. A copy of the Petition is attached hereto as Exhibit 1.

2. Defendant was served with the Summons and a copy of the Petition on or about July 21, 2014. A copy of the Summons and Service of Process Transmittal is attached hereto as Exhibit 2. Thus, this Notice of Removal is timely filed within thirty (30) days after Defendant was served with the Summons and Petition, pursuant to 28 U.S.C. § 1446(b).

3. No further process, pleadings or motions have been served and no further proceedings have taken place in this action. A copy of the state court docket sheet is attached hereto as Exhibit 3.

4. Venue is proper under 28 U.S.C. § 1441(a) for all federal claims because the District Court of Tulsa County, State of Oklahoma, is located within the district for the United States District Court for the Northern District of Oklahoma.

Federal Question Jurisdiction

5. Plaintiff's Petition contains claims for relief that relate to her employment. Specifically, Plaintiff claims relief for Defendant's alleged violation of the Civil Rights Act of 1866, 42 U.S.C. § 1981, and for retaliatory discharge in violation of the Oklahoma Workers' Compensation Act, 85 O.S. § 341. *See* Petition at ¶¶ 3-7.

6. Plaintiff's Petition is a civil action over which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1331 in that Plaintiff's claims of discrimination based on her race allegedly violate the laws of the United States. As a civil action founded on a claim or right arising under the laws of the United States, this action is removable to this Court pursuant to 28 U.S.C. § 1441(a).

7. As noted above, Plaintiff's Petition alleges retaliatory discharge in violation of the Oklahoma Workers' Compensation Act, 85 O.S. § 341, which claim is non-removable by statute. 28 U.S.C. § 1445(c). However, pursuant to 28 U.S.C. § 1441, because this action also includes a claim arising under the Constitution, laws or treaties of the United States, the entire action may be removed, and the workers' compensation retaliatory discharge claim must be severed and remanded to state court. 28 U.S.C. § 1441(c)(1) and (2). Defendant respectfully defers to this Honorable Court in relation to remand and severing of this claim.

8. Written notice of the filing of this Notice of Removal will be provided to Plaintiff together with a copy of the Notice of Removal and supporting documents. Pursuant to 28 U.S.C. § 1446(d), the same will be filed with the Clerk of the District Court of Tulsa County.

9. Pursuant to Local Rule 81.2, Defendant's Status Report on Removed Action shall be filed contemporaneously with this Notice of Removal.

10. Defendant submits this Notice of Removal without waiving any defenses to the claims asserted by Plaintiff, without conceding that Plaintiff has pled claims upon which relief can be granted, without admitting that Plaintiff has standing, and without admitting that Plaintiff is entitled to any monetary or equitable relief whatsoever.

11. This Notice of Removal does not waive any objections to defects in service of process, jurisdiction, venue, statute of limitations, exhaustion of administrative remedies, or any other defenses.

WHEREFORE, Defendant hereby removes the above-captioned action from the District Court of Tulsa County, State of Oklahoma, and requests that further proceedings be conducted in this Court as provided by law.

Respectfully submitted,

s/Steven A. Broussard

Steven A. Broussard, OBA #12582

Stephanie T. Gentry, OBA #18612

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**ATTORNEYS FOR DEFENDANT
K-MAC HOLDINGS CORP., D/B/A
TACO BELL**

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that on the 11th of August, 2014, I electronically transmitted the above Notice of Removal to the Court Clerk using the ECF System for filing and transmittal of Notice of Electronic Filing to the Following ECF registrant:

Brendan M. McHugh
Attorney at Law
P. O. Box 1392
Claremore, OK 74018

s/ Steven A. Broussard

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